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ABSTRACT

In response to recent controversy surrounding the relationship between religion and public education, this bulletin offers an examination of past and present conflicts and the legal status of each. A great diversity of religious beliefs is part of our national heritage. Conflicts resulting from differing views on the role of religion in education may best be dealt with when policies and procedures addressing such differences exist. Issues to consider include religious rituals, bible reading and prayers, observance of holy days, instructional activities, and curriculum content. Court decisions have distinguished between teaching a religion and teaching about religious matters. Moral and sex education may also be taught, though schools tend to avoid controversial content. One way districts have dealt with the separation of church and school is through the use of released time that allows students to attend religious classes. Another way is shared time between church-related and public schools. Decisions concerning the use of public school buses for parochial school students and the loaning of books to parochial schools have been conflicting. Current issues to be aware of include the rise of cults, the undecided fate of voucher systems, and the inclusion of the creation theory in the curriculum. An appendix of legal decisions and a bibliography are provided. (JK)

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OSSC BULLETIN

Religion and the Public Schools

by
George B. Martin

Oregon School Study Council
Vol. 24, No. 1
September 1980

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Preface

Religion and education have been intertwined since colonial days. From the beginning this has caused controversy. During the last two decades, as individuals have become more aware of their civil rights and liberties, these conflicts have spawned increased litigation.

In this *Bulletin*, George Martin looks at both the history of the relationship between religion and the public schools and the latest forms the controversies surrounding this relationship have taken. While his concern is with court decisions, he chooses to emphasize the areas in which the schools can still exercise discretion rather than the limits set by court decisions.

From 1956 till he retired in 1973, Dr. Martin was assistant superintendent in the Salem Public Schools. Prior to that, he served as a teacher, counselor, principal, and professor of education. Since his retirement in 1973, he has remained active in professional affairs as a volunteer for the State Department of Education, participating on the Personnel Management Advisory Committee. He also serves the Confederation of Oregon School Administrators as department secretary and editor of the organizations newsletter.

His views are particulary valuable because of his role in the Oregon Council of Churches' examination of released-time and shared-time programs in the state. He has a unique position from which to offer advice on how to deal with individuals and groups with conflicting views on the place of religion in the schools.

Introduction

Recent issues (June-July 1980) of publications that summarize current education news contained these reports:

- *A state supreme court has refused to review a lower court dismissal of a suit brought by Orthodox Jewish students who wanted to change high school graduation from their sabbath, Saturday, to some other day.*

- *School officials in a small Idaho community have been ordered not to hold high school graduation in the town's Mormon church.*

- *The US Supreme Court dismissed an appeal from a Pennsylvania school district opposing a state law that requires school districts to transport private school students to their schools, up to ten miles outside the school district's limits.*

- *Each year the public schools in major cities in the East play local parochial schools for a "city championship." These contests usually include only boys, and schools are challenged for violating Title IX because there are no similar opportunities for girls.*

- *A number of US congressmen are strongly supporting efforts to "put prayer back in the schools." They have support from conservative evangelical groups and are pursuing either legislation which would remove the issue from the jurisdiction of federal courts or would lead to an amendment to the US Constitution.*

It is obvious that historical concerns for the place of "religion in the public schools" are still with us.

The intent of this publication is to look at the current concerns and issues that involve the relationship of the public school with religious interests. This *Bulletin* will look back at the problems of the past and the ways in which we adapted to them. The role of the courts will be examined. The development and status of current issues will be reviewed.

It is intended that this document will be of help to local districts as they confront these issues. Further it is intended to provide useful suggestions on ways to work with community forces in response to the many requests and diverse opinions that come from members of our pluralistic society. It is not the intention of this *Bulletin* to tell the reader what to do or provide the "right" answer.

Historical Perspectives

The people who came to America's shores in early colonial days did so for a variety of reasons, including the search for religious freedom. As they settled the New England colonies, they had a clear feeling for the place of religion in their lives. Those who came to the middle colonies had a different religious orientation than those to the North, and those founding the southern colonies had yet other points of view. This diversity made it difficult to deal with the issue of religion. At the time the Consitution was being considered there was little, if any, discussion about the place of religion in the national picture, nor was anything said about the place of education in the debates of the time.

The First Amendment to the Constitution provides for separation of church and state by including language stating that "Congress shall make no law respecting an establishment of religion or prohibiting the free exercise thereof." This was the basis for early rulings of the courts; the focus was on what Congress might or might not do.

The Fourteenth Amendment was adopted some one hundred years later, following the Civil War. This Amendment provided among other things that no state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States, nor shall any state deprive any person of life, liberty, or property without due process of law, nor deny to any person within its jurisdiction the equal protection of the laws. By 1923 the Supreme Court had turned to this Amendment as a basis for determining whether the rights of individuals were being abridged

without due process. One of the first cases illustrating this use is that in which an Oregon statute was found to be unconstitutional (see page 30).

It may be noted that the diversity of religious beliefs had an important impact on the identification of the role of state-level educational interests. The first secretary of a state board of education, Horace Mann of Massachusetts, wanted to reduce the impact of Catholic sectarianism, but could do so only by casting off the sectarian claims of Massachusetts protestants, which he did not wish to do.

Heavy migration in the mid-1880s aggravated differences. The formation of a number of private philanthropic and church-related schools and agencies institutionalized the differences. Bible controversies were common with some states upholding and others denying Bible reading in the schools.

As emigrants moved westward, they carried with them both the hope of education for their children and the belief in the religion of their choice. Those settling in the West brought with them the religious orientation with which they were familiar or thought best. National diversity was the consequence.

We are the inheritors of these hopes and differences. We are today a diverse society. This diversity may be argued as both a strength and a weakness. Whatever one's point of view, a major challenge today is acceptance of differences and the accommodation of these differences in our social processes and agencies.

It may be concluded that the rights of individuals and groups in the United States have gone through a number of evolutionary changes. The

passage of the Fourteenth Amendment and its ultimate use by the courts under the leadership of the US Supreme Court have made it a tool through which persons can seek and be guaranteed their rights. As more and more tests of due process rights have gone through the courts, greater protection has been given to individuals. The wishes of the majority seem sometimes to have been denied and its control diminished over government and other actions of the people.

A number of landmark cases have come into the courts of our states and through them to the US Supreme Court. A summary of these cases may be found in Appendix A, pages 30-31. It may be helpful to refer to these findings as various issues are discussed.

Several studies or reports have come from educational interests in recent decades. In 1951 the Educational Policies Commission of the National Education Association issued a booklet entitled *Moral and Spiritual Values in the Public Schools*, which attracted considerable attention at the time. In 1964 the American Association of School Administrator's prepared a report, *Religion in the Public Schools*, which likewise served an important purpose for its time. Released time and shared time were among the strategies at issue in the sixties. In 1977 the Association of California School Administrators, in cooperation with the ERIC Clearinghouse on Educational Management. published a School Management Digest on *Conflicting Moralities in Education;* it sought to help educators deal with the difficulties of accommodating the diverse values in American society.

The writer of this document was active in the Oregon Council of Churches during the mid-sixties and gathered data from Oregon school districts to

determine the use of both released and shared time in Oregon schools. Information was also obtained to help districts live with the new court opinions and meet public requests for cooperative efforts to provide some form of religious instruction for children.

Based on these findings, the Council of Churches encouraged the State Department of Education to consider the preparation of a "handbook" designed to assist school districts to properly deal with the relationship of the schools to religious interests. Somewhat later a statewide committee was named to advise the State Superintendent of Public Instruction on the teaching of moral values in the public schools. The report, issued by this committee in January 1970, reflected the very diverse nature of the society and indicated the difficulty involved in making specific statements about the topic. There are presently no state-approved documents designed to assist school districts in dealing these concerns.

Much of the interpretation and the implied application of the findings of the courts has emphasized what could *not* be done. This emphasis has tended to direct attention away from what the rulings suggested *could* be done. The suggestions that follow will attempt to give primary attention to the latter.

As stated in the opening paragraphs, it is the intent of this publication to provide some positive comments to help districts deal with issues revolving around the public schools and religion.

Religion in the Schools

Religious issues that arise among the schools, people, and groups in the community often become heated. When communities become involved in conflict on the issues, the basic concerns are largely forgotten. Mounting emotions affect reason; fundamental questions are ignored and less important issues stay on the surface.

Differences in belief about the role of religion in education can be found not only between groups but also between members of groups. Even members of school boards may have differing views on the role of religion in education. The same may be said of school administrators and other staff members.

Based on information from communities that have experienced such conflict, it seems a school board and staff are better able to deal with such situations when a policy and procedure for dealing with differences exists. Policies and practices may vary in detail, but the fact that they exist can help to place the district in a positive leadership role and aid in its search for reconciliation and solution. A district board that is always defending itself without prior procedures to guide its actions will be continually trying to extricate itself from conflict.

District board and staff may find it useful to consider the requirements of federal and state laws and rules as they relate to discriminatory acts. These laws require that no one may be discriminated against for reasons of race, color, national origin, religion, sex, age, or marital status. It is necessary to take an affirmative action to avoid carrying out an act that discriminates either knowingly or unknowingly.

The following discussion of the issues offers suggestions to district personnel that may assist in reducing conflict where it exists and in avoiding conflict where it is absent.

Religious Rituals

The use of church rituals such as prayer and Bible reading in schools seemed to be an effort to provide a generalized Christianity in place of sectarianism. The practice has a long history in American schools. It was never truly satisfactory for those "outside" and even distasteful for many inside the protestant fold. However, religious practices and ceremonies survived even over the years of westward expansion and growth. Tradition was the major force that supported their continued use. This century has forced a reconsideration of these activities. The knowledge that our world was finite and limited in its resources, which were not equally available to all, has led to feelings of insecurity and to the rise of resistance to all forms of social control: the family, the church, the government, the school, and so forth.

The concern for loss of traditional control by such social institutions as the family and church has also tended to cause legislatures and social groups to turn to the schools with the request that they provide training and instruction designed to fill the gap between what the family and church used to do and what they are now able to do. There was the obvious question about how this might be done so that "equal opportunity" would be provided for all youth, no matter from what background they might come.

This request has come at a time when the courts seem to have reduced the ability of the schools to respond to the demands that come to it from

various interests in the community surrounding the school. These often vary between schools in a district.

Bible Reading and Prayers

One of the early issues relating religion to the schools was that dealing with the reading of the Bible, followed by prayer as a regular part of the school day, usually as an opening exercise. The early ruling of the Supreme Court on this issue was *McCollum v. Board of Education* in 1948.

The Court found that reading and prayer was part of an instructional program which was an aid to religion and therefore in violation of the First Amendment. This was the basis for later rulings in 1962 and 1963 declaring unconstitutional the use of prayers in New York and Bible reading in Pennsylvania and Maryland. These dealt with imposed prayers and district suggested readings from the Bible. Both Supreme Court rulings overturned prior decisions of lower courts. The decisions are found in *Engel v. Vitale* and *Abington Township v. Schempp.*

The school prayer and Bible-reading decisions shocked many Americans who were accustomed to thinking of "God and country." Much concern arising from the rulings came from a misunderstanding of the decisions. A number of congressional representatives who attempted to amend the Constitution were subsequently convinced of the reasoning of the Supreme Court. This reasoning was essentially that public institutions may not be used to extract confessional responses from persons nor to expect a uniformity of doctrine or conscience. The Court had, however, invited the objective examination of religious positions as part of the educational process. It may be noted that religious principles and teachings are legitimate matters for comparative and objective study, but are not positions to be supported or taught.

Changes in federal laws or in the US Constitution to allow Bible reading and prayers have been suggested ever since the 1948 decision. Some of these proposals were made despite the expectation that they would be found unconstitutional. The issue is more heated in some parts of the country than in others. The use of different forms of "devotions" has been proposed, such as "transcendental meditation," and others. None has been generally accepted.

There appears to be no full-scale effort to legalize Bible-reading and prayer among mainline denomonations; however, the practice may be found in some communities, where a strong local religious group is evident. A recent Gallup poll showed that 76 percent of the public favors school prayers, most of them being women, nonwhites, those with only a grade-school education, and older adults. The issue is still alive as this poll and the introductory quotes indicate.

Observance of Holy Days

The observance of religious holy days and the use of church-related music, art, and other items associated with the church continue to be a matter of community and court concern. This is most obvious in communities with the greatest diversity of social groups.

The observance of Christmas is an excellent example of this issue. This is a joyous and festive occasion throughout the country when carols are sung in banks, government buildings, business establishments--and in the schools. Streets are decorated and Santa Claus appears.

Since the early 1960s many voices have been raised in serious protest of this national observance. Some come from major church groups that would

remove the commercialism and secularization from the observance of the church holiday. Others speak either for forms of religious faith other than Christianity or for those who believe in no faith at all. A third group, probably the most numerous, includes those that are in support of the Christian tradition and in the seasonal "customs" of the people of this nation.

The major focal point of protest is the school, for here a large portion of the population gathers and must do so under the requirements of the law. The burden this places on many school boards and administrators is heavy. The following generalizations may be useful.

- *Christmas has a special significance in both community custom and folk culture. This includes not only the history of the event, but the arts that have developed around it. To omit these features of our national posture is to deny children use and understanding of this element in their environment.*

- *Christian leaders, in their efforts to reverse the tendency they see to take "Christ out of Christmas," oppose all secular and non-religious observances, whether in schools or elsewhere.*

- *The birth of Christ is celebrated by the enrolled members of every Christian denomination and shared by many without formal church affiliation. It touches most citizens and other persons in our society.*

- *School board members and staff are sensitive to the needs and interests of children in this society. The traditions surrounding Christmas have a particular significance to children and should be a part of the programs of the schools.*

In spite of these arguments, a school district may need to respond to protests in a manner that recognizes more directly the pluralism that is found in that community.

A district may meet the objections of many to its Christmas programs by not making them part of the regular school day of by selecting materials

for observances that are free from religious emphasis, or by choosing activities with regard for all the people of the school community.

The use of creches depicting the birth of Christ is another specific issue that comes during the Christmas holidays. A number of schools have traditionally used them in classrooms or about the building. Some communities place them on public property other than that owned by the schools. These have been challenged by individuals as well as groups, and courts have rendered decisions. Two rulings from New York have supported the placement of these displays on school grounds when they were erected by private groups, did not involve public funds or employees in the construction, and were on display at a time the schools were closed.

A school district board may find it useful to develop and implement a basic policy regarding the observance of holidays. The following is found in an article by Chester Nolte, in the December 1979 issue of *The American School Board Journal*, pages 39 and 52. It will be noted that this comes from and was part of a federal district court ruling, and that it is being challenged by the American Civil Liberties Union.

The practice of the district shall be as follows:

1) The several holidays throughout the year which have a religious and a secular basis may be observed in the public schools.

2) The historical and contemporary values and the origin of religious holidays may be explained in an unbiased and objective manner without sectarian indoctrination.

3) Music, art, literature, and drama having religious themes or bases are permitted as part of the curriculum for school-sponsored activities and programs if presented in a prudent and objective manner and as a traditional part of the cultural and religious heritage of the particular holiday.

4) The use of religious symbols such as a cross, menorah, crescent, Star of David, creche, symbols of Native American religions, or other symbols that are a part of a regligious holiday is permitted as a teaching aid or resource provided such symbols are displayed as an example of the cultural and religious heritage of the holiday and are temporary in nature. Among these holidays are included Christmas, Easter, Passover, Hanukkah, St. Valentine's Day, St. Patrick's Day, Thanksgiving, and Halloween.

5) The school district's calendar should be prepared so as to minimize conflicts with religious holidays of all faiths.

Another traditional school-sponsored ritual is that found in the baccalaureate exercises common at the end of the school year. These come out of the tradition of the religious-related part of instruction in the early schools in this country. They are under attack these days due to the issue of separation of church and school. The courts have looked at such concerns as the site for the exercise, whether attendance is compulsory, whether it is conducted by school personnel, and the purposes for which it is held. A number of districts have turned the matter over to students and left the decision and planning for the event to members of the graduating class.

Instructional Activities

The instructional programs of the schools today contain materials that have been subject to a number of legal challenges. These include physical education and required dress, dancing, biology and inclusion of the evolution theory, and language arts and related textbooks. Other sources of possible community conflict include moral education, sex education, and death education.

The dilemma facing the schools and their staffs is obvious. To offer an ecumenical program designed to accommodate all persons and groups is to provide too little for some too much for others. A review of past

experiences suggests that few controversies covered in this section will find their way into the courts; most will be resolved at the local level. Districts which have thought out their positions, that have anticipated problems or reacted positively to those already confronted, and which have policies and procedures available to deal with these issues will be best able to resolve conflict.

Curriculum Content

Court decisions have made the distinction between teaching a religion and teaching *about* religious matters. This difference may be hard to develop and to support if challenged, but it provides a basis for districts to build instructional content that draws upon historical sources having a religious content. Judges have stated that one's education is not complete without a study of comparative religion or the history of religion. The Bible is worthy of study for its literary and historical content when used objectively as part of the curriculum.

Some curricula have started with primitive religions and have progressed through the development of Protestantism, Roman Catholicism, Judaism, Islam, and others. The requirement that this be carried out without bias raises the question as to the degree of objectivity that may be found in the interpretation of history and the meaning of selections from literature. This places a heavy burden on teachers to deal objectively with content, without expressing their personal opinions or beliefs about the matter being discussed.

There is also the prospect that parents or groups may argue that it is inappropriate to discuss the meaning or to offer an interpretation of Biblical content, if they claim that the Bible is the literal word of God.

If religion is studied as a social or psychological phenomenon, will it also be considered as involving supernatural events.

In developing curriculum the schools tend to avoid content that will be controversial. This contrasts with the need to develop in students an "inquiring mind," which seeks to explore its environment. There are no trails marked out with signs clearly showing the way. This becomes a matter of local policy, of decision by the school board and willingness by the board to support the use of programs developed according to its policies and decisions.

The role of the school in providing sex education is under frequent challenge. The relationship of this issue to the question of religion lies in the moral decisions that are involved, and the teaching of the church (and the family) about sex practices. It was pointed out in the opening pages of this document that moral issues and the meaning of "moral and spiritual" values are difficult to determine in a society of such great diversity as ours, with the rights of the individual so protected.

A variety of responses have developed to the challenge to sex education. A common one is to make it voluntary or to allow parents to remove children from those portions of health education that they protest. The claim that only the parents have the right to teach their children about sex has been denied by the courts. Rulings have accepted sex education programs in the schools, the reasoning being that the challenge of the parents is simply not religious in nature but primarily involves education and public health.

A Michigan school district continued a program that had been in use for over thirty years, providing moral education in kindergarten and lower grades during the school day. The program, consisting of Bible stories used to teach moral standards, was presented monthly. The board argued that the instruction was in response to the approval received from the community. The program was found to be unconstitutional in 1978, and the court suggested it could be presented on a released time basis.

It may be noted that teaching and educating involves a value-oriented process and that this is unavoidable. The school attempts to do in an orderly, planned manner what the home claims it can do but does so at best in many instances in a nonsystematic and, to some children, nonlogical manner. A value has been defined as an idea, a concept, about what someone thinks is important in life--but all people do not value the same thing.

Much more could be said about controversial content and issues concerning the curriculum. Many school districts have wrestled with this matter and have found ways to make adjustments in areas of potential or actual conflict.

Released/Shared Time

One of the ways in which individual districts in Oregon and other states have dealt with the matter of the separation of church and school has been through the use of one or both of these programs: the release of children during the school day to attend religious classes off-campus and the sharing of students between a church-related school and the public school. The former is used most often with the elementary age child; the latter with secondary school students.

The practice of released time was first implemented through excusing children from the regular classrooms to attend religion classes held in the school building. The Supreme Court in 1948 ruled in *McCollum v. Board of Education* that this was unconstitutional as it involved the use of tax-established and tax-supported public schools to aid religious groups to spread their faith. Four years later the Supreme Court declared that a program to release children to attend religious classes off-campus and, usually, at the end of the school day, was constitutional. In 1976 the placement of trailers outside the public school, with instruction during the school day, was accepted by the courts.

An alternative program that has had some use involves dismissing school early once a week at which time children go to classes in religious instruction off-campus when parents wish the children to do so. The tendency has been for parents to prefer programs that occur during the school day.

Shared-time programs most often involve classes that are regular parts of the instructional program of the district; they do not directly involve religious instruction. The shared classes are most frequently those which tend to be most costly due to laboratory equipment and space, or those which tend to have smaller enrollments. The private or parochial school usually finds that it is economically better to share the students time with the public school which is already providing this instruction. One of the tests of the legal relationship between public and parochial instruction revolves around the issue of "excessive entanglement" of the benefits of the programs offered, an issue that may yet be tested in the matter of shared-time.

School districts may wish to consider the following questions as they apply to shared-time programs already operational and to those that may be considered for the future:

- What are the implications of secular and religious subjects?
- What schedule modifications are necessary?
- What happens to student allegiance?
- What are community school relations?
- Who is legally responsible for the students?
- What are the transportation requirements?
- What are the financial factors?

A number of other issues are involved in the questions of separation of school and religion. They are only mentioned in this *Bulletin*. They include:

Flag salutes--the courts have ruled that required salutes are unconstitutional

Compulsory attendance--the courts have ruled that Amish children are not required to attend high school, basing the decision on the right of the parents to raise their children as they wish, not on the basis of a religious belief.

Use of School Facilities

The courts have heard a number of cases involving the use of public school facilities and funds. Early decisions, starting in the 1920s, gave attention to the concept of "child benefit" as the basis for deciding that public assets should be used to support programs for children in parochial schools.

The matter of bus transportation was decided in 1947 in the *Everson* case. The US Supreme Court ruled that children could be transported by public school buses to a parochial school. It did not rule that such was required. Some states have decided against this service because of the state constitution. Oregon is one state that permits parochial children to use public school

buses along the regular routes only. Current court rulings forbid providing bus service for parochial children across school district or state borders.

Another issue about the use of public funds for parochial schools deals with the purchase of texts and teaching aids. The 1965 Elementary and Secondary Education Act opened the door on this matter. Until that time most states had ruled against loaning secular textbooks to nonpublic school pupils. The Oregon courts ruled against the loan of books in 1962, a decision that was in effect overturned by the US Supreme Court a few years later when it approved such practice in another state. The courts have ruled against direct grants to parochial schools for the purchase of texts, but have allowed public schools to purchase and lend materials to parochial schools.

The decision to approve use of public funds for loaning textbooks is based on the argument that secular texts are not as useful for religious instruction as might be films, recordings, projection equipment, and other visual aids. Approval is also based on the fact that texts are distributed to individual students, whereas supplementary materials, being of lesser quantity and not provided to individual children provide more direct aid to the parochial school.

Other aids to students' learning have been judged appropriate in some cases and not in others. Services and materials designed to meet the requirements of the handicapped child act, Public Law 94-142, may be found to be acceptable use of public funds, but time has not yet permitted direct court review of this issue.

The Staff

As a conclusion to this section on "Religion in the School" it may be useful to comment on the role of the teacher (and administrator) in carrying out whatever may be the policy and practice of the district.

It has often been said that learning truly takes place when the teacher and class are enclosed in the classroom. The response of the teacher, either planned or accidental, to the action taking place in the classroom is the actual determiner of the instructional climate and teaching program.

When the teacher is dealing with moral values, religious concepts, history and literature, or is instructing in health and science, it is likely that the beliefs of the teacher may surface. In this time when the evangelical churches have emerged as a vital part of the religious community, it is perhaps even more difficult for some teachers to carefully edit what they say and how they say it. Teachers dealing with the issues already discussed and with those in the next section need to be sure that they deal with the approved course content and keep clearly in mind the implications of separation of school and religion.

Oregon statutes specifically require that all certificated teachers know about and make use of the laws and regulations regarding the avoidance of discriminatory practices. These statues require that no persons shall be discriminated against either for or on the basis of religion.

It may also be necessary to remember that the courts have in effect extended the provisions of the First Amendment to apply to the operation of the

schools. This would appear to mean that no school (or its employees) may act to support any specific form or deny to others the free exercise of religion.

Current Issues

This last section will deal with three current concerns that have some tie with the issues of religion and the schools. These are the rise of the cults, the use of a voucher system, and the attention directed to the placing of the creation theory in the curriculum.

The Cults

One of today's more perplexing phenomena revolves around the rise of religious cults. While this does not appear to have a direct relationship with the public schools, it does have to do with the students enrolled. The issue involves entire families and those associated with school-age persons who are attracted to those groups commonly referred to as cults. This is not to imply that all so titled are to be considered harmful in their teachings; it is to suggest that some are said to be.

It is not appropriate for the school or its staff to get involved in the issues that arise around the cult movement. While it was once thought more strongly than today that teachers served *in loco parentis*--in place of the parent while the child was in school--this is no longer the case. What the courts have said about the relationship of the parent to the child would certainly apply to the school employee, namely, that interference by the parent can be characterized as in conflict with the First Amendment right of an individual to exercise free religious choice.

The best thing teachers and administrators can do to fulfill their role with students may be to help increase the learners' knowledge about cults and how they function. This may be done in a comparative religion

class or otherwise as may be appropriate and in keeping with district policies and procedures. Special research projects as part of the regular course requirement may be useful in approaching this matter.

Voucher Systems

The voucher idea is not new. It was found in the capitalistic philosophy of writers almost two hundred years ago. It started its current rise into public minds in the 1950s. This was the result, in part, of the ruling of the courts in 1925 that gave parents the clear right to select the schools their children would attend. It was quickly revealed that the right was limited by the economic condition of the family.

Further emphasis was given to the use of vouchers in the late fifties and early sixties when the public schools were perceived by some as unresponsive to minorities and urban poor and denying opportunity to all youth. Public schools were referred to as a monopoly.

At about the same time and increasingly so in the following years, it was found that many parochial schools were facing higher costs and adverse economic conditions. Interest in assisting them developed. This was encouraged by a number of states that wanted to help parents find schooling for children as an alternative to attending desegregated schools.

Milton Friedman was an early promoter of the voucher concept; it attracted considerable interest in the Nixon administration. A number of studies were made and proposals developed. In Alum Rock, California, the plan was tested. As a result of the *Serrano* decision in 1971 declaring that the property tax as a basis for funding public education violated equal protection guarantees, and the passage of Proposition 13 in 1978, California voters were given an opportunity in 1980 to approve a voucher system. It was turned down at the polls.

Presently the issue of education vouchers appears undecided. The idea that government certificates would be issued to parents, that they might give them to the school of their choice, and that the school would return them to the government for payment is yet to find a major testing.

Arguments against the various voucher proposals confront the issue of church and state, and the First Amendment. The voucher concept's relationship to the implementation of desegregation efforts and to attempts to find ways to reduce the cost of education are also serious concerns. There are also questions as to the wisdom that may be found in the choice of schools that some parents might make, and in the new schools that might rise in response to the possibility of funding from vouchers.

The Creation Theory

Although it may appear to some that the request for "equal time" for the study of the creation theory of the universe and man is new, such is not the case. It has roots that go back for many years. The current evolution-creation debate is not a "Bible Belt" phenomenon as was once the case. It is now nationwide in its impact and has been before the legislatures of many states as well as under consideration by state boards of education.

The issue gets into the basic philosophy of what course content should be mandated. The general argument is that the less mandated the better. However, the statutes or rules in many states include requirements for instruction in American history, government, physical education, driver education, and other areas generally thought to be necessary for an educated citizen. At the same time, a number of subjects are often forbidden by law and rule, such as sex education, communism and many values-oriented issues.

The requirement for or against the inclusion of the evolution theory is most frequently found to be absent. The textbooks adopted by a state or by local districts determine inclusion or absence of any concept. The teachers' "lesson plans" actually determine curriculum content.

The major attempt today in many places is to confront the local school board with the request to grant equal time or to otherwise modify the district curriculum to accommodate the demands of citizen groups. Requests for change in this area of instruction provides for removing the evolution theory and replacing it with the creation theory, retaining the evolution idea and adding the creation theory, or a middle ground such as giving each theory "equal" time. It is difficult to design a program that provides an equal amount of time for both of the concepts. The data, the resources, and the interests of children may all control the time given to any discussion.

The people urging inclusion of the creation theory are well organized and have a strong advocacy position and organization. At the same time the concern for teaching the creation theory has come to strength, a number of people on the "science" side have raised questions about absolute views on evolution which gives fuel to the argument for change.

One of the more complex issues that revolves around the creation theory is the basis found for it in the Bible and other religious writings. It is also complicated by the fact that various churches hold varying degrees of doctrine on the creation of the universe and man. It is thus immediately an issue that has a value or a religious base. This leads to the question of how it should or could be taught.

If school districts wish to include study of the creation theory, a first question is where to place it in the curriculum. The general trend is to consider that it is appropriately part of the science curriculum; it has been in social studies. In science it would be subject to the use of the "scientific method" in whatever degree it may be used in such classes. It would also require, presumably, that such references to the creation theory as "Divine" force, the "Biblical account," or the "Genesis story" would need to be avoided.

It is probable that the courts, and finally the US Supreme Court, will be required to determine the parameters within which this theory may be explored in the public schools. The issue of church and school would appear to be a matter of real concern.

In the meantime, it is quite possible and appropriate for a local school board to exercise its authority to determine, within state law and rule, the specific content of its courses. It may do so by providing appropriate exploration of any "theory" that it may wish its children to know about. As was pointed out earlier, a school board that has developed policies and procedures for dealing with controversy and change, and for the ways in which it will work with community groups, will be in the best position to wisely reach the decisions needed in a manner that will minimize conflict.

Summary

It is obvious to the reader that this *Bulletin* has been general in its discussion of the issues surrounding church and school and the place of "religion" in the instructional program of the schools. There has been no attempt to tell districts what to do. Much more detail may be found by selective examination of the sources listed in the bibliography.

The attempt here has been to mention a number of areas of past and current conflict and to point out the basis for the present status of each. It has been made quite clear that the United States Constitution, especially First and Fourteenth Amendments, serve as the basis for what is permissible religious content in the public schools and how these relationships may be implemented.

This *Bulletin*, with the suggested resources and with the advice of a district's attorney may provide the necessary information for wise decisions that fit the needs and interests of individual communities and their children. It may well be true that the decisions will vary among districts.

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APPENDIX A

Landmark Legal Decisions of the US Supreme Court

(*This summary was adapted from that prepared by David Tavel, and found in in Church-State Issues in Education, Fastback #123, Phi Delta Kappa Educational Foundation, 1979.*)

Pierce V. Society of Sisters, 268 U.S. 510. In 1925 the Court struck down an Oregon law that required attendance at public schools by all children between the ages of 8 and 16, and affirmed the right of parents to send their children to nonpublic schools.

Everson v. Board of Education, 330 U.S. 1. The Supreme Court in 1947 upheld a New Jersey statute under which parents were reimbursed for the cost of transporting their youngsters to a Roman Catholic high school on buses operated by the public transportation system, and made publicaly financed busing possible for children in states that did not have a constitutional prohibition against such expenditure.

McCollum v. Board of Education, 333 U.S. 203. One year after its *Everson* decision, the Court ruled against a Champaign, Illinois, practice whereby church representatives came into the public schools during the school day to provide religious instruction, and said that to use facilities maintained with public funds to provide religious instruction was unconstitutional.

Zorach v. Clauson, 343 U.S. 306. In 1952 the Supreme Court upheld a "released time" program in New York City whereby some pupils were released early from their public school to attend religion classes away from the school grounds. The Court thus permitted the public schools to cooperate with churches in regard to the religious instruction when carried out away from the public school.

Engel v. Vitale, 370 U.S. 421. In a 1962 ruling the Court invalidated the use in New York schools of a prayer composed by the state Board of Regents saying that government may not compose official prayers for any group of the American people.

Abington Township School District v. Schempp, 374 U.S. 203. Faced with two cases dealing with Bible reading and prayer recitation, one from Pennsylvania where the practices had been invalidated and one from Maryland where they had been upheld, the Court in 1963 ruled that prayer and Bible reading were religious exercises and, as such, were not permissible in public schools.

Board of Education v. Allen, 392 U.S. 236. The Court in a 1968 decision involving the loan of secular textbooks to parochial school pupils upheld such practice as supportive of the secular as distinguished from the religious function of the nonpublic school.

Lemon v. Kurtzman; Earley v. DiCenso, 403 U.S. 602. Ruling in 1971 on cases arising from legislation in Pennsylvania (*Lemon*) and Rhode Island (*Earley*), the Court invalidated several forms of public aid to church schools. These included reimbursement for the cost of teacher salaries, textbooks, and other instructional materials, as well as salary supplements. The Court in a threefold test for constitutionality, saying they were invalid if 1) their purpose is to advance or inhibit religion, 2) their primary effect is to advance or inhibit religion, or 3) they lead to excessive governmental entanglement with religion.

Wisconsin v. Yoder, 406 U.S. 205. In 1972 the Supreme Court supported the Amish in their refusal to comply with the compulsory attendance statutes of Wisconsin. The Court's decision, which exempted the Amish from attending high school, lent little encouragement to other groups that might seek the same exemption and pose a challenge to a century-old American tradition of compulsory education.

P.E.A.R.L. v. Nyquist, 413 U.S. 756; *Levitt v. P.E.A.R.L.*, 413 U.S. 472; *Sloan v. Lemon*, 413 U.S. 825. In three decisions handed down on June 25, 1973, the Court invalidated aid to nonpublic schools in the form of tuition grants for parochial school pupils, tax benefits, grants for maintenance and repair of parochial schools, and grants to pay for state-mandated services performed in the nonpublic schools. With each ruling the Court was lessening the scope of permissible aid.

Meek v. Pittenger, 421 U.S. 349. The Supreme Court in 1975 ruled as unconstitutional a Pennsylvania law that provided nonpublic schools with instructional materials and equipment and a variety of auxiliary services including counseling, testing, psychological services, speech and hearing therapy, and special instructional services for exceptional, remedial, and disadvantaged pupils.

By mid-1977 the Court had limited aid to nonpublic schools to textbook loans, provision of standardized tests and scoring devices, diagnostic services on parochial school property, guidance and remedial services outside the schools, and busing.